United States Postal Service, Employer-Petitioner and American Postal Workers Union, AFL-CIO and National Association of Letter Carriers, AFL-CIO and National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Division of the Laborers' International Union of North America, AFL-CIO and National Rural Letter Carriers' Association. Case 5-RM-866 (P)

June 11, 1981

# RULING ON ADMINISTRATIVE APPEAL

On April 17, 1981,2 the United States Postal Service (USPS or Postal Service) filed the instant RM petition with the Regional Director for Region 5 of the National Labor Relations Board, seeking an election in a unit of "all employees at facilities engaged in mail processing and delivery." This unit, alleged by USPS to be appropriate, consists of an estimated 600,000 employees. The petition stated that the current contract expires on July 20. On April 20, USPS filed a letter in support of its petition asserting that it is now confronted with demands for fragmented bargaining by four Unions<sup>3</sup> which represent units inappropriate for separate bargaining and which do not conform to the Board's criteria for appropriate units generally or as contemplated by the Postal Reorganization Act (PRA)4 to maintain an efficient postal service for the United States.

On April 21, APWU and NALC filed a motion to dismiss the petition, arguing that the petition was filed untimely and that it failed to raise a question concerning representation. On April 24, Mail Handlers and NRLCA filed a motion to dismiss arguing that the petition, although timely filed, failed to raise a question concerning representation. On April 27, the Postal Service filed its response to the APWU/NALC motion to dismiss.

On April 30, Acting Regional Director Louis D'Amico administratively dismissed the instant petition on the ground that, although timely filed,<sup>5</sup> it

failed to raise a question concerning representation in that:

that any of the labor organizations which it currently recognizes has lost its majority status within the postal craft unit in which it is respectively recognized. Nor is there any evidence or contention that any labor organization claims or in any other respect seeks to represent the employees in the petitioned-for unit.

With regard to the contention that the PRA requires the Board to act on the petition, he observed that:

. . . it does not appear that there is anything in either the PRA or its legislative history or the Board Rules and Regulations as well as decisional authority which would indicate that Congress intended the Board to alter its traditional principles in the processing of cases involving postal employees.

On May 18, the Postal Service filed its request for review and hearing contending that a question concerning representation exists because the postal bargaining units are inappropriate and the Unions thus lack majority status in an appropriate unit, that the PRA provides independent authority requiring the Board to determine the appropriate unit for collective bargaining in the postal service, and that, at the very least, the Postal Service and the NLRB are entitled to a hearing and the benefit of a record. On May 18, the Postal Service also filed a supplement to its request for review alleging a new APWU claim to represent a single, national bargaining unit consisting of four "crafts," "an amalgam of the four historic accidents called 'crafts." On May 22 and 27, Mail Handlers/NRLCA and APWU/NALC, respectively, filed opposition to such requests.

On the basis of the Acting Regional Director's investigation and decision, prior proceedings involving the Employer, and the submissions of the parties, the Board, for the reasons set forth below, has decided to deny the Postal Service's request for review and to affirm the conclusions and ultimate disposition of the Acting Regional Director.

<sup>&</sup>lt;sup>1</sup> In his petition, the Postmaster General deemed "N/A" the form's question on "recognized or certified bargaining agent" but, instead, listed the designated unions, and the National Alliance of Postal and Federal Employees as "known to have a representative interest in any employees in the unit described" as appropriate in the RM petition. As the National Alliance has not responded to the various documents served upon it herein, it is omitted from the present caption.

<sup>&</sup>lt;sup>2</sup> Unless otherwise indicated, all dates are in 1981

<sup>&</sup>lt;sup>3</sup> American Postal Workers Union, AFL-CIO (APWU); National Association of Letter Carriers, AFL-CIO (NALC); National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Division of the Laborers' International Union of North America, AFL-CIO (Mail Handlers); and National Rural Letter Carriers' Association (NRLCA).

<sup>&</sup>lt;sup>4</sup> Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 733; 39 U.S.C.A., Chapter 12-Employee-Management Agreements, Secs. 1201-09.

<sup>&</sup>lt;sup>b</sup> The instant petition was filed on April 17 approximately 95 days before the expiration of the current agreements. Sec. 1207(a) of the PRA

provides for 90 days' notice by a party desiring to modify or terminate an agreement as did the 1974 health care amendments. As the Board had modified the length of the "insulated period" for collective-bargaining agreements in health care institutions to 90 days to coincide with the 90-day notice provision contained in Sec. 9(d)(1) and (4) of the National Labor Relations Act (NLRA), the Acting Regional Director concluded that, in light of the clear parallel between the time periods enacted by the PRA and the 1974 health care amendments, the instant petition was timely. Review was not requested of this ruling. We therefore do not pass on it.

## Background

The history of bargaining between the Postal Service and the Unions is described more fully in the Acting Regional Director's dismissal letter, as well as in a prior case before the Board. Sometime in 1962, pursuant to Executive Order 10988, the Post Office Department determined that appropriate bargaining units should be national in scope and coincide with seven traditional "craft" lines. In 1962 and 1963, elections were held, following which the Post Office recognized seven "craft" unions as exclusive bargaining representatives in national units.

In 1970, Congress passed the PRA, which applied the NLRA to labor relations in the Postal Service "to the extent not inconsistent" with the provisions of the PRA. Section 10 of the PRA provided for a transitional period during which the Postmaster General and labor organizations holding national exclusive recognition rights granted by the Post Office Department were mandated to "negotiate an agreement or agreements not later than 30 days following the delivery of a written request therefor by a labor organization to the Postmaster General [PG] or by the PG to a labor organization." Such agreement was to continue in force and effect after the reorganization as if entered into between the Postal Service and a recognized collective-bargaining representative under the PRA.

Between 1962 and 1970, four successive national agreements were negotiated jointly between the Post Office Department and the seven national unions. In 1971, four of the unions merged into APWU, and the four remaining Unions—APWU, NALC, Mail Handlers, and NRLCA—negotiated a joint national "interim" agreement, effective to 1973.7

This pattern of bargaining, with recent exceptions, has continued to date, with a master agreement being executed by the Postal Service and the four national craft unions, continuing in effect substantial, separate articles relating to the respective unions. There were in this manner successor contracts in 1973 and 1975.

In 1978, NRLCA informed USPS that it wished to negotiate a separate agreement, and did so, with APWU, NALC, and Mail Handlers continuing to bargain jointly and negotiate a separate national contract. This year, 1981, USPS has been advised by APWU and NALC that they wished to bargain jointly with USPS on behalf of their constituents, while the NRLCA and Mail Handlers have indicat-

ed they wished to "coordinate" their bargaining and to execute separate contracts.

It is against this history of successive national agreements formulated along "craft" lines that the USPS now files a petition with the Board seeking an election in a single, national 600,000-employee unit.

#### Precedent

The Board agrees with the Acting Regional Director that, under existing Board precedent, there exist no grounds for granting the USPS request for an election in a single national unit.

The Postal Service acknowledges that "the only issue was, and remains, whether the Postal Service's petition raises 'reasonable cause to believe that a question concerning representation' [OCR] exists." As used in Section 9(c)(1) of the NLRA and section 1203(c) of the PRA a "question of representation" describes the circumstances which must exist before the Board is empowered to direct an election in an appropriate unit. Both statutes require claims or demands for recognition by a labor organization.8 In particular, an RM petition is appropriate when (1) the employer is faced with organizational or recognitional picketing without a petitionhaving been filed,9 (2) the employer is confronted with a demand for exclusive recognition or faced with conflicting representation demands in the unit alleged as appropriate; 10 or (3) the employer has a good-faith doubt as to the union's continued majority support within the unit it already represents<sup>11</sup> None of these required circumstances is present here and the Employer does not claim that they are. Under these circumstances, i.e., in the absence of a claim by any union for recognition in the 600,000-employee USPS unit, there was no "reasonable cause to believe that a question of representation" existed in this unit, the one alleged to be appropriate by the Employer, and therefore the

<sup>6</sup> United States Postal Service, 208 NLRB 948 (1974).

<sup>&</sup>lt;sup>7</sup> Each such agreement recognized the continued existence of separate craft representation by including articles applicable only to and negotiated by each of the Unions involved.

<sup>&</sup>lt;sup>8</sup> Congress strictly limited the reasons for which an employer could seek an RM petition. NLRA Sec. 9(c)(1)(B) and PRA Sec. 1203(c)(2) provide for "a petition . . . filed, in accordance with such regulations as may be prescribed by the Board—. . . alleging that one or more labor organizations have presented to it a claim to be recognized as the representative."

<sup>&</sup>lt;sup>9</sup> Sec. 8(b)(7)(C) of the NLRA

<sup>&</sup>lt;sup>10</sup> The implementing regulation, the Board's Rules and Regulations, Series 8, as amended, Sec. 102.61(b)(3), requires from the employer:

A brief statement setting forth that one or more . . . . labor organizations have presented to the petitioner a claim to be recognized as the exclusive representative of all employees in the unit claimed to be appropriate; a description of such unit; and the number of employees in the unit. [Emphasis supplied.]

<sup>11</sup> United States Gypsum Company, 157 NLRB 652 (1966). In such a situation, the employer must demonstrate by objective considerations that it has some grounds for believing that the incumbent union has lost its majority status.

Board had no basis to proceed with its investigation under Section 9(c)(1).12

The Acting Regional Director cited several cases to support his conclusion that, in the absence of a claim for recognition in the unit alleged as appropriate by the Employer in its RM petition, such petition will not be processed by the Board. LTV Aerospace Corporation (Range Systems Division), 170 NLRB 200, 202 (1968); The Housatonic Public Service Company, 111 NLRB 877 (1955); Maclobe Lumber Company of Glen Cove, et al., 120 NLRB 320 (1958). The cases so holding, many of which were cited in the oppositions, are legion.

The Employer alleges, first, that such cases are distinguishable because in them the existing, recognized units all were deemed appropriate by the Board. Here, the Employer contends, the existing units never have been appropriate because they do not constitute traditional crafts and, moreover, recently have become even less appropriate because of raiding, technological change, and other factors. We find no merit in this contention. The Board has never held, nor do we choose to hold here, that merely because an existing, recognized unit may be inappropriate for certification, an employer may force a labor organization to an election in a larger unit alleged to be appropriate. As we stated in Ny-Lint Tool and Manufacturing Co., supra at 643, "To force the Union . . . to an election in a unit which it does not claim to represent would result, not only in a futile act leading toward a purely negative result, but also in depriving the employees of any opportunity to select any bargaining representative for an entire year after the election.

In further pressing its point that its RM petition should be entertained, USPS calls the Board's attention to several cases in which, notwithstanding the absence of an immediate present claim in the larger unit by any labor organization,13 the Board directed an election in the unit requested by the employer. The cases cited by USPS are Westinghouse Electric Corporation, 144 NLRB 455 (1963); Boston Gas Company, 221 NLRB 628 (1975); Massachusetts Electric Company, 248 NLRB 155 (1980); and The Denver Publishing Company, 238 NLRB 207 (1978). The Postal Service urges that the type of "practical reasoning" displayed in those cases be applied here. However, in each of these cases, an employer transferred employees from separate bargaining units to new departments or merged facilities, the different unions involved had competing claims of representation, and only an all-employee unit could be appropriate. The merger of the units was the tangible event triggering the need for the RM petition. In the instant case, it is undisputed that the four postal Unions merely have sought to continue to represent the distinct crafts or groups that they traditionally have represented. There has been no recent merger of units, no substantial change in the Postal Service's operations with respect to those units, and no ongoing disputes concerning which labor organizations represent the employees within the traditional units. Moreover, in contexts in which employees already are organized, limiting the use of an RM petition to certain tangible events—i.e., objective evidence giving rise to good-faith doubt of majority status or a merger of units with resulting conflicting claims—is essential to prevent the unacceptable results identified in Ny-Lint, supra. 14 We therefore deem the rationale of the four decisions relied on by USPS inapplicable here.

## Other Claimed Bases for Processing the Petition

The Postal Service contends there are other reasons for processing its petition, one of which is its assertion that the "proposed union bargaining structure" for the current 1981 negotiations is "unworkable" and that the problems in reaching agreements are "further exacerbated by the raiding campaigns by two of the unions, APWU and NALC, to win over members of the other two unions," Mail Handlers and NRLCA, respectively. The APWU and NALC, which together represent approximately 500,000 of the approximately 600,000 postal employees, jointly have notified the Postal Service that they intend to renegotiate the National Agreement expiring at midnight on July 20, 1981. The APWU and NALC formed a Joint Bargaining Committee headed by NALC President Sombrotto and APWU General President Biller. These union representatives have met on several occasions with the collective-bargaining representatives of the Postal Service to establish ground rules for the par-

<sup>12</sup> Bernard Klint, Grace Klint, David H. Nyberg and Emma Nyberg, copartners, d/b/a Ny-Lint Tool & Manufacturing Co., 77 NLRB 642, 643 (1948). See discussion of limitations of RM petitions.

<sup>&</sup>lt;sup>13</sup> In its opposition, APWU/NALC note that in the cases cited by USPS there was, in fact, at least at one time, a claim by a labor organization to represent employees in the overall unit.

<sup>14</sup> In its request for review, the Employer suggests that, should the Board find no question concerning representation, the Board might treat its RM petition as one seeking unit clarification. The Employer cites Coca-Cola Bottling Company of New York. Inc., 133 NLRB 762 (1961), in which an employer converted represented drivers to owner-operators and alleged they were independent contractors. Finding no question concerning representation the Board treated the RM petition as a UC petition and clarified that the individuals were employees. See also Brotherhood of Locomotive Firemen and Enginemen, 145 NLRB 1521 (1964). The Employer confesses that even it does not deem a UC petition appropriate since, if it is correct in its argument that one overall national unit is solely appropriate, an election would be necessary to determine the majority bargaining representative. A UC petition is never appropriate to determine a question concerning representation, and could therefore not achieve the single, national unit sought by the Employer.

ties' negotiations. To this end, the Joint Bargaining Committee and the Postal Service agreed to meet on April 22, to begin negotiations. At the same time, as previously described, the Mail Handlers, representing approximately 35,000 mail handlers, and the NRLCA, representing approximately 43,000 rural carriers, notified the Postal Service that they wish to coordinate their negotiations and execute separate collective-bargaining agreements. Thus, the only change since 1978 is that the Mail Handlers has chosen to negotiate with the NRLCA, rather than with the Joint Bargaining Committee established by the APWU and NALC.

In the context of such demands, the Postal Service admits that what it seeks by its RM petition is a Board determination of:

... a structure for postal bargaining which has some hope of success and some reasonable likelihood of serving both the end of maintaining an efficient Postal Service for the American public as directed by the PRA and that of stable labor-management relations, the primary goal of the NLRA.

It proposes as a solution the establishment of a single unit of "all employees at facilities engaged in mail processing and delivery" and alleges that such a unit includes all the employees claimed to be represented by the four labor organizations involved in the seven "craft" units. The Postal Service alleges that the 15-year history of joint bargaining by the four Unions and their seven predecessors masked the inappropriateness of the units because they were "de facto" one unit. However, the breakoff of the NRLCA in the last negotiations and the fragmentation of bargaining proposed now, allegedly, have "exposed that inappropriateness and required that it be dealt with." We disagree.

While we recognize that bargaining in the Postal Service has its unusual and, to the USPS, perhaps undesirable characteristics, the Employer seeks a solution to which it is not entitled, by either the NLRA or the PRA, through an RM petition. As we have indicated, processing such a petition to its logical conclusion would result in the holding of an election in a unit which no union claims to represent. Moreover, insofar as a basis for the Postal Service's position is the withdrawal by some of the unions from joint or coalition bargaining, the Board is not at liberty to remedy the situation in a representation proceeding. Such proceedings are designed to determine the identity of the bargaining agent or agents, not the structure or pattern of bargaining. To the extent that coalition bargaining may have been involved, we note that while the

Board has approved<sup>15</sup> coalition bargaining it never has compelled it. Furthermore, there is no evidence that separate bargaining is unworkable beyond the Employer's assertion that it is. Partial fragmentation occurred in 1978 and the parties reached agreements.

Nor is there a basis for relying on the Postal Reorganization Act as creating an independent ground for entertaining the instant petition. The Postal Service contends that "the PRA created special labor-management provisions, of which unit determination is one." This contention is based on the fact that section 1202 stands alone, separate from the wholesale incorporation of the NLRA in section 1209. Section 1202 of the PRA provides:

The National Labor Relations Board shall decide in each case the unit appropriate for collective bargaining in the Postal Service. . . .

Such contention is undermined by the text of the PRA itself, which closely tracks the language of Section 9 of the NLRA.<sup>16</sup> The legislative history shows that the Joint Congressional Conference noted their intention to:

... leave to the National Labor Relations Board the judgment as to what will be the appropriate units for collective bargaining in the Postal Service on the basis of the same criteria applied by the Board in determining appropriate bargaining units in the private sector. [Conference Report, H.R. 17070, H.R. Rep. No. 91-1363, pp. 81-82, cited in *United States Postal Service*, 208 NLRB 948, 952-953 (1974).]

Congress intended that the collective bargaining in the Postal Service be treated like any other employer under the NLRA (except for specifically stated exceptions, such as prohibiting strikes by postal workers and imposing binding arbitration in the event the parties reach an impasse in collective bargaining). Section 1202, in its amended form, does no more than "mirror" Section 9(b) of the NLRA. Despite the fact that section 1202 stands separately, Congress intended only that "postal unions which are not craft unions will have . . . the opportunity, subject to recognition procedures by the National Labor Relations Board, to compete for recognition." (116 Cong. Rec. S. 12635, August

<sup>&</sup>lt;sup>18</sup> See General Electric Company, 173 NLRB 253 (1968), enfd. 412 F 2d 512 (2d Cir. 1969).

<sup>18</sup> Sec. 9(b) reads:

The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or sub-division thereof

3, 1970). (Emphasis supplied.) Contrary to the Postal Service's contentions in this case, and like the United States Court of Appeals for the District of Columbia Circuit, "we do not read section 1202 of the PRA as mandating the NLRB to make such a determination before representation petitions are filed," which require determination of the unit appropriate for bargaining in the postal service. National Alliance of Postal and Federal Employees, et al. v. Klassen, 514 F.2d 189, 193, fn. 5 (1975), cert. denied 423 U.S. 1037.

## Requirement of a Hearing

Noting that the Acting Regional Director dismissed its petition administratively, the Employer contends that, at the least, it is entitled to a hearing and the benefit of a record. In its brief, the Postal Service alleges that it "has found well over a hundred RM cases and the only ones found in which an RM petition was dismissed without a hearing were those cases in which the RM petition was not timely filed." The Acting Regional Director's failure to hold a hearing, it contends, is entirely arbitrary and capricious.

We do not agree. Both section 1203(c) of the PRA and Section 9(c)(1) of the NLRA provide that the Board shall investigate a petition filed in accordance with such regulations as may be prescribed by the NLRB "and, if it has reasonable cause to believe that a question of representation exists, shall provide for an appropriate hearing upon due notice." Both section 1203(c)(2) and Section 9(c)(1)(B) provide for petitions by the Postal Service "alleging that one or more labor organizations have presented to it a claim to be recognized as the representative."

The Employer's petition failed to comply with these statutory requirements, and with the implementing regulation. See footnote 10, *supra*. It therefore was defective in that it merely sought to have the Board determine the appropriate unit without regard to the admitted lack of any claim for recognition in the unit alleged by the Employer to be appropriate.

The NLRB Casehandling Manual, Part Two, Section 11010.4, provides for preliminary investiga-

tion of representation cases and authorizes dismissal if the petition is not withdrawn "where no representation question affecting commerce exists." In these circumstances, "[n]either hearing nor consent-election possibilities should be explored . . ." Section 102.71 of the Board's Rules and Regulations, supra, also provides for dismissals of petitions without hearings. Such administrative dismissals are routine but typically are unpublished.

#### Conclusion

The Employer here requests the Board to hold a hearing and possibly to conduct an election in circumstances which would be contrary to precedent and also not mandated either by provisions of the National Labor Relations Act or the Postal Reorganization Act. Moreover, such a hearing, if conducted, would consume many days, weeks, or even months, at a time when the parties' current collective-bargaining agreement is about to expire. The conduct of an election in the entire postal service would entail the balloting of approximately 600,000 employees, a task of mammoth proportions which the Board of course would undertake in appropriate circumstances. We find no such circumstances to be present here. Despite the scattered raiding alleged by the Employer to have occurred among some of the incumbent unions, the documents filed by the Employer demonstrate that it does not truly question the representative status of the various unions in the long-established units. Even accepting, arguendo, the allegations of the Employer pertaining to the inappropriateness of the existing bargaining units or the unworkability of the present bargaining structure, we find the Acting Regional Director's dismissal of the Employer's RM petition to have been proper and required. Accordingly, we affirm his action and deny the Employer's request for a review.

## MEMBER JENKINS, concurring:

For the reasons expressed by the Acting Regional Director in his attached dismissal letter, I would deny review without further comment, as is our usual course in such cases.